IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-12-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.16648 of 2003
and
WPMP No.11905 of 2004

The Management of
Praxair Limited
62/2B, Vanagaram High Road
Ambattur, Chennai 600 053. .. Petitioner

vs

1.The Deputy Commissioner of
Labour (Minimum Wages)
(Appellate Authority under Tamil
Nadu Shops & Establishments
Act 1947)
Chennai 600 006.
2.G.Subbarama Raju
3.The Management of
Ameri Gas Private Limited
62/2B, Vanagaram High Road
Ambattur, Chennai 58. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari to call for the records and quash the order dated 15.2.2002 in TSE.II.No.25 of 2001 on the file of the first respondent, the Deputy Commissioner of Labour (Minimum Wages), (Appellate Authority under Tamil Nadu Shops & Establishments Act 1947), Chennai 600 006.

For Petitioner : Mr.Meenakshisundaram
For Respondents : Mr.S.Gopinathan
Additional Government
Pleader for R1

Mr.C.R.Chandrasekaran
for R2

No appearance for R3

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ORDER

The petitioner management has brought forth this writ petition for a writ of certiorari to quash an order passed by the first respondent, the Deputy Commissioner of Labour (Minimum Wages), namely the appellate authority under Tamil Nadu Shops & Establishments Act 1947.

2.The affidavit in support of the petition along with the grounds and the affidavit filed by the second respondent in the direction petition, are perused. The Court heard the learned Counsel on either side.

3.The order under challenge came to be passed in an appeal filed by the second respondent herein whereby he challenged an order of termination by the third respondent management.

4.Admittedly, the second respondent was employed under the management of the third respondent, and his services were terminated in the month of January 1998. The management of the writ petitioner had taken over the said company on transfer in the month of April 1998, and thus, the name of the second respondent was not in its roll.

5.The gist of the case that was put forth by the second respondent in his appeal before the appellate authority, was that he had put in 17 years of permanent service as Assistant Manager; that he was orally terminated by the third respondent on 20.1.1998, which was unfair; that his services have been transferred from the associate company of the third respondent namely M/s.Asiatic Oxygen Limited, Padi, Madras, on and from 2.8.1997; that thereafter, he continued to be with M/s.Ameri Gas Private Limited; that the second respondent was taken into service by that Asiatic Oxygen Limited; that a signature was obtained from him by the third respondent company by coercion and undue influence in a piece of paper without allowing him to go through it; that only after signing the paper, a copy of the same was handed over to him along with two cheques for Rs.1,35,426/- on 27.1.1998; that he was also asked not to report duty from the next day onwards; that thereafter, he found that it was a receipt for full and final settlement of his dues from M/s.Ameri Gas Private Limited, Madras, the third respondent herein; that afterwards, he filed an application for payment of gratuity under the provisions of the Gratuity Act and also an appeal seeking to set aside the order of termination; that the application for payment of gratuity was subsequently withdrawn by him; that the order of termination was arbitrary and illegal, and hence, it was to be set aside.

6.While the appeal was filed, there was a delay in preferring the appeal. At that time, it was objected to by the third respondent stating that the delay should not be condoned; that if the delay was to be condoned, the appellant namely the second respondent herein, must proceed against the proper management since the actual transfer of management has taken effect from 16.4.1998; and that the appellant might be advised to put forth his claim, if any, against the proper

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management.

7.While the matter stood thus, the delay was condoned, and then, an application was filed to implead M/s.Praxair Limited namely the writ petitioner herein, to whom there was a transfer of management by the third respondent company. On contest, the said application was ordered, and the writ petitioner was added as party to it. Then, the parties went on enquiry, as a result of which the first respondent passed an order setting aside the order of termination of the second respondent by the third respondent, which is the subject matter of challenge in the writ petition before this Court.

8.Advancing his arguments on behalf of the writ petitioner, the learned Counsel raised the following three main points:

(a) Firstly, the second respondent was, admittedly, terminated from service on 20.1.1998, and he has also received two cheques in full and final settlement of his dues. He encashed those cheques. Had it been true that such a receipt was obtained from him by coercion and undue influence, he should not have encashed the same; but, instead, he encashed the same.

(b) Secondly, he also filed an application for payment of gratuity under the Gratuity Act. Had it been true that the termination of service was illegal, there was no occasion for him to file an application for payment of gratuity under the provisions of the Act, and subsequently, he has withdrawn that application.

(c) Thirdly, in the instant case, he has pleaded that the receipt was obtained from him by coercion and undue influence. Thus, it was for him to prove the same; but, he failed.

The learned Counsel would submit that for the above reasons, the order passed by the first respondent without considering the position both factual and legal, was not correct, and hence, it has got to be set aside.

9.Contrary to the above contentions, it is contended by the learned Counsel for the second respondent that the order passed by the lower authority, has got to be sustained; that it is true that the second respondent was actually under the services of the third respondent in January 1998; but, his services were terminated orally; that even according to the writ petitioner, what was all available was only the receipt for full and final settlement of the amount; that it is also true that two cheques were issued; that it is also an admitted position that he had encashed the same; but, there is no material to indicate that his services were terminated properly by any written form; that when such an appeal was filed, the third respondent management desired to wash its hands by simply stating that the company had been transferred to the writ petitioner, and if he has got any remedy, he must work out the remedy against the writ petitioner management and not against the third respondent; but, the writ petitioner took a stand that at the time of termination of the service

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in January 1998, he was under the management of the third respondent and not under the writ petitioner, and hence, he was not in the roll of the management of the writ petitioner, and they were not liable to answer the claim; that under the circumstances, they took two different stands; and that by stating so, they wanted to make easy walk over in order to sustain the termination.

10.Added further the learned Counsel that the main case of the second respondent was that the termination of service was illegal since they have obtained a receipt by undue influence and coercion; that a look of the receipt itself would indicate the same; that while such a contention was raised and the second respondent had also gone into the box to speak about that fact, not even anybody was examined either on the side of the third respondent or on the side of the writ petitioner to counter the same; that what was available before the first respondent, the Deputy Commissioner of Labour, was the evidence of the second respondent; that under the circumstances, the first respondent has relied on the evidence and passed the order, and hence, it has got to be sustained, and the writ petition be dismissed.

11.The Court paid its anxious consideration on the submissions made.

12.It is not in controversy that the second respondent was under the employment of the third respondent in January 1998. According to the third respondent management, his services were terminated on 20.1.1998. That apart, they would say that since the management has already terminated him and it was also legally done, no question of setting aside the same would arise since his salary and other benefits have been given in full and final settlement as could be seen from the receipt passed on by the employee on 27.1.1998. Further, they would add that if at all any claim could be made, it must be against the proper management, that would, according to the third respondent, mean the present writ petitioner. But, the writ petitioner came forward to say that the management was transferred by the third respondent to the writ petitioner only in April 1998; that the services of the second respondent were terminated in the month of January 1998, and thus, the name of the second respondent was not in its roll at the time of the transfer, and hence, the appeal was not at all maintainable.

13.As could be seen from the materials available, it was a challenge of termination of services of the second respondent. Now, what was all available was only the receipt passed on. The receipt was dated 27.1.1998. Even the name of the witness has not been filled up. The receipt would say "on account of full and final settlement". Now, at this juncture, it is pertinent to point out that even in the averments, the third respondent has categorically stated that it was an oral termination. This Court is at a loss to understand when a man has put in service for nearly about two decades, where is the question of oral termination that would arise. Added circumstance is the two cheques that were issued, whereby full and final settlement was also made on getting a receipt on 27.1.1998. What was the reason for giving two postdated cheques is also not made known.

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14.Apart from the above, as rightly contended by the learned Counsel for the second respondent, it was a specific pleading of the second respondent in the appeal petition that the receipt was obtained from him by undue influence and coercion, and therefore, as appellant what he could do is to adduce his evidence in that regard, and he has also adduced oral evidence before the forum. But, at the same time, it is pertinent to point out that there was no contra evidence; but, the writ petitioner would say that they are not competent to give any evidence since such a document was given by the second respondent in the month of January even before the transfer of management by the third respondent to the present writ petitioner. Even assuming to be so, since the third respondent was also a party at the time of the enquiry, a duty was cast upon them to adduce evidence to the effect that no such receipt was obtained by coercion and undue influence, and the said receipt was not tainted by any invalidating factors. But, the third respondent has not done so. Now, the writ petitioner cannot be allowed to say that the third respondent was the competent person to give such evidence, but not done so, and therefore, it would not be binding. So long as the termination of the second respondent is found to be bad and illegal, then automatically, it would follow that he was continued to be in service, and his services have got to be reinstated. Once there was evidence adduced by the second respondent for a particular fact of coercion and undue influence, it is not rebutted by the opposite party namely the third respondent. Under the circumstances, the first respondent was perfectly correct in basing its finding on that evidence.

15.True it is that the second respondent has filed an application for payment of gratuity. It remains to be stated that he has filed both the application for payment of gratuity and the appeal on the very same day which would not mean that he cannot have his remedy in the appeal. Further, merely because he has encashed both the cheques, the same cannot also be a reason to deny the remedy. This Court is of the considered opinion that once the receipt has been passed on towards full and final settlement and found to be not one in accordance with law, and also he is a person of 20 years service, the oral termination by the third respondent management would go to show that all was not well. Under the circumstances, the lower authority was perfectly correct in setting aside the order of termination and hence, the order has got to be sustained. Accordingly, this writ petition fails, and the same is dismissed. No costs. Consequently, connected WPMP is also dismissed.

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Asst.Registrar

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Sub Asst.Registrar

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nsv/

To:

1.The Deputy Commissioner of
Labour (Minimum Wages)
(Appellate Authority under Tamil
Nadu Shops & Establishments
Act 1947)
Chennai.

+1cc to Mr.Meenakshi Sundaram, Advocate Sr 75286
+1cc to Mr.C.R.Chandrasekaran, Advocate Sr 74810
+1cc to Govt. Pleader Sr 74893

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km/4.1.

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